



UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
NEW YORK REGIONAL OFFICE
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MEMO ENDORSED

October 16, 2015

Via Email to SullivanNYSDChambers@nysd.uscourts.gov and ECF

Hon. Richard J. Sullivan
United States District Judge
United States District Court
Southern District of New York
40 Foley Square, Room 2104
New York, New York 10007

USDS SDNY
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Re: SEC v. Zachary Zwerko and David L. Post (14-cv-8181-RJS)

Dear Judge Sullivan:

We represent the Plaintiff, Securities and Exchange Commission (the "Commission"), in this action. We write in response to the Court's January 30, 2015 Order staying this matter pending resolution of the parallel criminal action (United States v. Post, et ano., 14-cr-715-AKH) and June 29, 2015 Order by Memo Endorsement, which "So Ordered" our undertaking to provide a status report by October 16 (Docket Entries 12, 21).

The parallel criminal case is moving toward resolution but is not fully resolved. As previously reported, both Defendant Post and Defendant Zwerko have pleaded guilty to all counts of their respective Informations. Defendant Zwerko was recently sentenced, and Defendant Post is scheduled to be sentenced on November 12, 2015.

On October 13, 2015 Judge Hellerstein conducted a Fatico hearing to determine the amount of Defendant's Post's illegal trading profits that were reasonably foreseeable to Defendant Zwerko, made findings by a preponderance of the evidence on that issue, and imposed a criminal sentence on Defendant Zwerko. Specifically, Judge Hellerstein found that all of Defendant Post's illegal profits in one TD Ameritrade account were reasonably foreseeable to Defendant Zwerko, in the amount of approximately \$646,000. Among the evidence that Judge Hellerstein relied upon in making that finding, the Judge credited Mr. Post's testimony and discredited Mr. Zwerko's contradictory testimony. Judge Hellerstein imposed a term of imprisonment of 37 months, which was at the top of the applicable guidelines range of 30-37 months. The Judge also ordered criminal forfeiture in the amount of \$646,000, a criminal fine in the amount of \$50,000, and a three-year term of supervision following the term of imprisonment.

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Because Defendant Post has not been sentenced, the parties believe that the Court should leave the stay in effect. The parties will provide an additional update to the Court on or before November 25, 2015.

If the Court has any further questions, the parties are available for a conference.

Respectfully submitted,

/s/ Dominick D. Barbieri

Charles D. Riely
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cc (via email):

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IT IS HEREBY ORDERED THAT the parties' request is GRANTED and the stay shall remain in effect pending resolution of the parallel criminal case. IT IS FURTHER ORDERED THAT, by November 25, 2015, the parties shall jointly submit a letter to the Court regarding the status of the criminal case.

SO ORDERED

Dated:


RICHARD J. SULLIVAN
U.S.D.J.

10/16/15